

194 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Tenaska Power Services Co.

Docket No. IN25-13-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 12, 2026)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement and Regulatory Accounting (Enforcement) and Tenaska Power Services Co. (TPS). This order is in the public interest because the Agreement resolves on fair and equitable terms Enforcement's investigation (Investigation) under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2025), into whether TPS violated the ISO New England Inc. (ISO-NE) Open Access Transmission Tariff (Tariff) and the Commission's regulations while submitting offers for the output from an approximately 250 MW natural gas-fired generator in Agawam, Massachusetts (the Berkshire Generator) on January 11-12, 2021 (the Relevant Period).¹

2. TPS stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations in Section III of the Agreement. TPS agrees to (a) pay a civil penalty of \$51,000 to the United States Treasury; (b) disgorge \$78,354, plus interest, to ISO-NE; and (c) provide compliance monitoring reports to Enforcement as provided in the Agreement.

I. Facts

3. During the Relevant Period, TPS served as the Lead Market Participant in ISO-NE for the Energy and Ancillary Services from the Berkshire Generator. As Lead Market Participant, TPS was required to submit offers on behalf of the Berkshire Generator (including all information necessary to submit such offers) and to respond to ISO-NE's

¹ During the Relevant Period, the Berkshire Generator was owned by Berkshire Power Company LLC (Berkshire Power). Berkshire Power was subsequently sold in September 2024. *See Berkshire Power Co., LLC*, 188 FERC ¶ 62,137 (2024).

directives to start, shutdown, or change output. TPS is authorized by the Commission to sell power at market-based rates.²

4. During the Relevant Period, the Berkshire Generator had an ISO-NE Capacity Supply Obligation (CSO) of 229 MW.

5. The owner of the Berkshire Generator during the Relevant Period, Berkshire Power, as noted above, was an affiliate of TPS. During the Relevant Period, Berkshire Power compensated TPS for performing the duties of Lead Market Participant on behalf of the Berkshire Generator's Energy and Ancillary Services in the ISO-NE energy markets.

6. In consultation with Berkshire Power and plant operators, TPS procured natural gas fuel for the Berkshire Generator through requests to an affiliated fuel supplier, Tenaska Marketing Ventures (Tenaska Marketing).

7. During the Relevant Period, TPS submitted day-ahead and real-time energy offers for the Berkshire Generator and accepted the other obligations under ISO-NE's tariff applicable to Lead Market Participants. Under ISO-NE Tariff Section III.1.7.20(b), Lead Market Participants are responsible for submitting energy offers from generators (including the physical operating characteristics of the generators), updating such offers, and communicating the availability and unavailability of generators for which they submit offers.

8. The Economic Maximum (EcoMax) is one of the physical parameters for a generator that must be communicated to ISO-NE. A generator's EcoMax is the maximum available output that a Market Participant offers to supply. A Market Participant must maintain an up-to-date EcoMax for all hours in which the Generator Asset has been offered.³

9. In addition, resources with CSOs have "strict performance obligations."⁴ Specifically, under ISO-NE Tariff Section III.13.6.1.1.1, resources must "offer into both the day-ahead and real-time energy markets a MW amount equal to or greater than [the] Capacity Supply Obligation when the resource is physically available." Under ISO-NE Tariff Section III.1.10.1A(c)(v), resources with CSOs must also "keep supply offers open

² See *Tenaska Power Servs. Co.*, Docket No. ER94-389-000 (May 26, 1994) (unreported).

³ See ISO-NE Tariff § I.2.2.

⁴ See *New England Power Generators Association, Inc. v. ISO New England Inc.*, 144 FERC ¶ 61,157 at P 55 (NEPGA), order on reh'g, 145 FERC ¶ 61,206 (2013).

throughout the operating day.”⁵ During the Relevant Period, as Lead Market Participant for a Capacity Resource, TPS was offering energy from its affiliated Capacity Resource.

10. In exchange for being offered into the ISO-NE energy markets on a daily basis, resources with CSOs receive monthly capacity payments. During January 2021, Berkshire Power’s monthly capacity payment was approximately \$1,214,490.

11. The Commission has found that the ISO-NE tariff excuses performance by a resource with a CSO where the resource is physically unavailable due to its inability to procure fuel or transportation for the resource to run beyond its day-ahead commitment, or when not scheduled in the day-ahead market.⁶ An economic decision not to procure fuel (*e.g.*, where fuel has become more expensive after an offer is submitted) does not excuse a lack of performance.⁷

12. On Saturday, January 9, 2021, TPS submitted a Day-Ahead energy offer to ISO-NE for Monday, January 11, 2021 for the Berkshire Generator with an EcoMax of 251 MW. On January 10, 2021, ISO-NE notified TPS that the Berkshire Generator had received a day-ahead award at its EcoMax for every hour of January 11, 2021.

13. On January 11, 2021, TPS submitted Day-Ahead energy offers for January 12, 2021 for the Berkshire Generator with an identical EcoMax of 251 MW. Also on January 11, ISO-NE notified TPS that the Berkshire Generator had received a day-ahead award at its EcoMax for every hour of January 12, 2021.

14. ISO-NE dispatched the Berkshire Generator on January 11, 2021, consistent with its day-ahead award. On January 11, the Berkshire Generator initially operated and produced energy at its full EcoMax of 251 MW.

15. Shortly after 10:00 am on January 11, 2021, after the Berkshire Generator received its day-ahead award for January 11, but before it received its day-ahead award for January 12, Tennessee Gas Pipeline (the natural gas pipeline serving the Berkshire Generator) issued an Operational Flow Order (OFO) affecting the meter connected to the Berkshire Generator. After Berkshire Power informed TPS of the OFO issued to Berkshire, and that the OFO indicated that planned natural gas fuel deliveries to the Berkshire Generator could be impacted, TPS understood that additional fuel supplies would need to be secured for the generator to operate at its EcoMax.

⁵ *NEPGA* at P 49.

⁶ *NEPGA* at P 56 (explaining the ISO-NE tariff’s requirements).

⁷ *Id.*

16. Following the issuance of the OFO, TPS, working with Tenaska Marketing, immediately attempted to locate additional intraday supplies of natural gas to make up for the expected reduction of scheduled gas deliveries to the Berkshire Generator. TPS learned that additional intraday non-firm gas supplies could be obtained to operate the Berkshire Generator at its dispatched EcoMax, but that the prices for those fuel supplies would be elevated. TPS advised Berkshire Power and plant operators of the fuel supply situation. At that time, Berkshire Power did not authorize TPS to purchase additional fuel.

17. Berkshire Power personnel subsequently contacted the ISO-NE control room and requested to reduce the dispatch of the Berkshire Generator from 251 MW to 150 MW (an amount that was below both the Berkshire Generator's EcoMax and CSO). Berkshire Power personnel did not mention that fuel was available to operate the Berkshire Generator at full EcoMax and at the CSO.

18. With Berkshire Power personnel's knowledge, ISO-NE personnel then placed the Berkshire Generator into a "limited-energy generator" (LEG) status with a maximum physical output equal to 150 MW. LEG status is limited to generators that, due to physical design considerations or environmental restrictions, are unable to operate continuously at full output on a daily basis.⁸ However, the Berkshire Generator did not qualify for LEG status. Immediately following the communications between Berkshire personnel and ISO-NE, ISO-NE began sending reduced dispatch instructions to the Berkshire Generator, dropping the dispatch requirement from the unit's EcoMax to its EcoMin, and the Berkshire Generator reduced its output accordingly, from 251 MW to 150 MW.

19. Early on January 12, 2021, the pipeline supplying gas to the Berkshire Generator removed the OFO condition. At 6:36 AM, a Berkshire Generator operator contacted the ISO-NE Operations Control Room to request that the generator be dispatched back up to its full day-ahead EcoMax award of 251 MW. During the call, the ISO-NE Control Room operator asked for, and received, confirmation that the Berkshire Generator operator was requesting that ISO-NE remove the LEG designation. ISO-NE then resumed dispatch of the Berkshire Generator at its full EcoMax.

20. The Investigation arose out of a referral from ISO-NE's Internal Market Monitor.

21. TPS fully cooperated with Enforcement during the Investigation.

⁸ See ISO-NE Tariff § I.2.2.

II. Violations

22. Enforcement determined that during the Relevant Period, TPS violated provisions of the ISO-NE tariff and 18 C.F.R. §§ 35.41(a) and (b) when its affiliate, Berkshire Power, sought to avoid additional more expensive fuel purchases that would have enabled the Berkshire Generator, an ISO-NE capacity resource, to run at the levels dispatched by ISO-NE per the resource's day ahead award.

23. Resources in ISO-NE with CSOs have a strict performance obligation. Capacity resources receive guaranteed monthly capacity payments in exchange for which they are required to be offered into the ISO-NE energy markets on a daily basis and to be available for operation regardless of whether a daily offer is accepted. Nonperformance by or inaccurate information about these resources can have substantial economic and reliability effects.

24. Section III.13.6.1.1.1 of the ISO-NE Tariff requires Generating Capacity Resources, like the Berkshire Generator resource, to "be offered into both the Day-Ahead Energy Market and Real-Time Energy Market at a MW amount equal to or greater than its Capacity Supply Obligation whenever the resource is physically available"

25. ISO-NE Tariff Section III.13.6.1.1.2 requires that Day-Ahead and Real-Time Energy Market offers "reflect the then-known unit-specific operating characteristics (taking into account, among other things, the physical design characteristics of the unit) consistent with Good Utility Practice. Resources must re-declare to the ISO any changes to the offer parameters that occur in real time to reflect the known capability of the resource."

26. In *NEPGA*, 144 FERC ¶ 61,157 at P 47, the Commission held that the ISO-NE Tariff establishes "a strict performance obligation on capacity resources and that capacity resources may not take economic outages, including outages based on economic decisions not to procure fuel or transportation."

27. Enforcement determined that TPS violated Sections III.13.6.1.1.1 and III.13.6.1.1.2 of the ISO-NE Tariff during the Relevant Period by modifying the real-time offers of the Berkshire Generator based on economic factors rather than physical availability. Further, even if such a revised offer was permitted, TPS did not ascertain whether LEG status was appropriate for the plant and did not dispute, through Berkshire Power, LEG status for which the Berkshire Generator was ineligible. The effect of these actions was to enable Berkshire Power to take an economic outage inconsistent with the performance obligation of resources with CSOs.

28. Section 35.41(a) of the Commission's regulations, 18 C.F.R. § 35.41(a), provides that: "[w]here a Seller participates in a Commission-approved organized market, Seller must operate and schedule generating facilities, undertake maintenance, declare outages,

and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market.” Section 35.36(a)(1) of the Commission’s regulations, 18 C.F.R. § 35.36(a)(1), defines “Seller” as “any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act.”

29. TPS has, and had during the Relevant Period, market-based rate authorization and failed to schedule the Berkshire Generator consistent with the ISO-NE Tariff, as described above. Enforcement therefore concluded that TPS violated 18 C.F.R. § 35.41(a).

30. Section 35.41(b) of the Commission’s regulations, 18 C.F.R. § 35.41(b), provides that: “[a] Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.”

31. Enforcement determined that attempts to reduce the dispatched level of the Berkshire Generator resource falsely and misleadingly communicated to ISO-NE a physical inability to operate at the resource’s CSO. These false communications violated 18 C.F.R. § 35.41(b) because such a reduction was not due to a physical inability to operate but rather an economic decision not to procure higher-priced fuel.

III. Stipulation and Consent Agreement

32. Enforcement and TPS have resolved the Investigation by means of the attached Agreement.

33. TPS stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the violations described in Section III of the Agreement.

34. TPS agrees to pay a civil penalty of \$51,000 to the United States Treasury.

35. TPS agrees to pay \$78,354, plus interest, in disgorgement to ISO-NE.

36. TPS agrees to submit an annual compliance monitoring report to Enforcement for one year with the second year at Enforcement’s discretion.

IV. Determination of Appropriate Remedies and Sanctions

37. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,⁹ including that TPS cooperated with Enforcement during the Investigation.

38. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

39. The Commission also concludes that TPS's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.¹⁰

40. The Commission directs TPS to make the civil penalty payment and disgorgement as required by the Agreement within twenty days after the Effective Date of the Agreement.

41. The Commission directs ISO-NE to allocate the disgorgement funds as set forth in the Agreement.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

⁹ *Enforcement of Statutes, Orders, Rules, and Regulations*, Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216 (2010).

¹⁰ *Id.*

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Tenaska Power Services Co.

Docket No. IN25-13-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement and Regulatory Accounting (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Tenaska Power Services Co. (TPS)¹ enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, preliminary investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2025). As described more fully in Section II below, the Investigation concerned whether TPS violated the ISO New England Inc. (ISO-NE) Tariff and the Commission's regulations while submitting offers for the output from an approximately 250 MW natural gas-fired generator in Agawam, Massachusetts (the Berkshire Generator) owned by TPS's affiliate at the time, Berkshire Power Company, LLC (Berkshire Power),² on January 11-12, 2021 (Relevant Period).

2. TPS stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. TPS agrees to: (a) pay \$78,354 in disgorgement, plus interest, to ISO-NE that Berkshire Power received during the Relevant Period; (b) pay a civil penalty of \$51,000 to the United States Treasury; and (c) provide compliance monitoring reports to Enforcement as provided more fully below.

II. STIPULATIONS

Enforcement and TPS hereby stipulate and agree to the following facts:

3. During the Relevant Period, TPS served as the Lead Market Participant in ISO-NE for the Energy and Ancillary Services from the Berkshire Generator. As Lead Market Participant, TPS was required to submit offers on behalf of the Berkshire Generator (including all information necessary to submit such offers) and to respond to ISO-NE's directives to start, shutdown, or change output.

¹ TPS's parent company is Tenaska Energy, Inc.

² Berkshire Power was subsequently sold in September 2024. *See Berkshire Power Co., LLC*, 188 FERC ¶ 62,137 (2024).

TPS is authorized by the Commission to sell power at market-based rates.³

4. During the Relevant Period, the Berkshire Generator had an ISO-NE Capacity Supply Obligation (CSO) of 229 MW.

5. The owner of the Berkshire Generator during the Relevant Period, Berkshire Power, as noted above, was an affiliate of TPS. During the Relevant Period, Berkshire Power compensated TPS for performing the duties of Lead Market Participant on behalf of the Berkshire Generator's Energy and Ancillary Services in the ISO-NE energy markets.

6. In consultation with Berkshire Power and plant operators, TPS procured natural gas fuel for the Berkshire Generator through requests to an affiliated fuel supplier, Tenaska Marketing Ventures (Tenaska Marketing).

7. During the Relevant Period, TPS submitted day-ahead and real-time energy offers for the Berkshire Generator and accepted the other obligations under ISO-NE's tariff applicable to Lead Market Participants. Under ISO-NE Tariff Section III.1.7.20(b), Lead Market Participants are responsible for submitting energy offers from generators (including the physical operating characteristics of the generators), updating such offers, and communicating the availability and unavailability of generators for which they submit offers.

8. The Economic Maximum (EcoMax) is one of the physical parameters for a generator that must be communicated to ISO-NE. A generator's EcoMax is the maximum available output that a Market Participant offers to supply. A Market Participant must maintain an up-to-date EcoMax for all hours in which the Generator Asset has been offered.⁴

9. In addition, resources with CSOs have "strict performance obligations."⁵ Specifically, under ISO-NE Tariff Section III.13.6.1.1.1, resources must "offer into both the day-ahead and real-time energy markets a MW amount equal to or greater than [the] Capacity Supply Obligation when the resource is physically available." Under ISO-NE Tariff Section III.1.10.1A(c)(v), resources with CSOs must also "keep supply offers open throughout the operating day."⁶ During the Relevant Period, as Lead Market Participant for a Capacity Resource, TPS was offering energy from its affiliated Capacity Resource.

³ See *Tenaska Power Servs. Co.*, Docket No. ER94-389-000 (May 26, 1994) (unreported).

⁴ See ISO-NE Tariff § I.2.2.

⁵ See *New England Power Generators Association, Inc. v. ISO New England Inc.*, 144 FERC ¶ 61,157 at P 55 (NEPGA), order on reh'g, 145 FERC ¶ 61,206 (2013).

⁶ NEPGA at P 49.

10. In exchange for being offered into the ISO-NE energy markets on a daily basis, resources with CSOs receive monthly capacity payments. During January 2021, Berkshire Power's monthly capacity payment was approximately \$1,214,490.

11. The Commission has found that the ISO-NE tariff excuses performance by a resource with a CSO where the resource is physically unavailable due to its inability to procure fuel or transportation for the resource to run beyond its day-ahead commitment, or when not scheduled in the day-ahead market.⁷ An economic decision not to procure fuel (e.g., where fuel has become more expensive after an offer is submitted) does not excuse a lack of performance.⁸

12. On Saturday, January 9, 2021, TPS submitted a Day-Ahead energy offer to ISO-NE for Monday, January 11, 2021 for the Berkshire Generator with an EcoMax of 251 MW. On January 10, 2021, ISO-NE notified TPS that the Berkshire Generator had received a day-ahead award at its EcoMax for every hour of January 11, 2021.

13. On January 11, 2021, TPS submitted Day-Ahead energy offers for January 12, 2021 for the Berkshire Generator with an identical EcoMax of 251 MW. Also on January 11, ISO-NE notified TPS that the Berkshire Generator had received a day-ahead award at its EcoMax for every hour of January 12, 2021.

14. ISO-NE dispatched the Berkshire Generator on January 11, 2021, consistent with its day-ahead award. On January 11, the Berkshire Generator initially operated and produced energy at its full EcoMax of 251 MW.

15. Shortly after 10:00 am on January 11, 2021, after the Berkshire Generator received its day-ahead award for January 11, but before it received its day-ahead award for January 12, Tennessee Gas Pipeline (the natural gas pipeline serving the Berkshire Generator) issued an Operational Flow Order (OFO) affecting the meter connected to the Berkshire Generator. After Berkshire Power informed TPS of the OFO issued to Berkshire, and that the OFO indicated that planned natural gas fuel deliveries to the Berkshire Generator could be impacted, TPS understood that additional fuel supplies would need to be secured for the generator to operate at its EcoMax.

16. Following the issuance of the OFO, TPS, working with Tenaska Marketing, immediately attempted to locate additional intraday supplies of natural gas to make up for the expected reduction of scheduled gas deliveries to the Berkshire Generator. TPS learned that additional intraday non-firm gas supplies could be obtained to operate the Berkshire Generator at its dispatched EcoMax, but that the prices for those fuel supplies would be

⁷ NEPGA at P 56 (explaining the ISO-NE tariff's requirements).

⁸ *Id.*

elevated. TPS advised Berkshire Power and plant operators of the fuel supply situation. At that time, Berkshire Power did not authorize TPS to purchase additional fuel.

17. Berkshire Power personnel subsequently contacted the ISO-NE control room and requested to reduce the dispatch of the Berkshire Generator from 251 MW to 150 MW (an amount that was below both the Berkshire Generator's EcoMax and CSO). Berkshire Power personnel did not mention that fuel was available to operate the Berkshire Generator at full EcoMax and at the CSO.

18. With Berkshire Power personnel's knowledge, ISO-NE personnel then placed the Berkshire Generator into a "limited-energy generator" (LEG) status with a maximum physical output equal to 150 MW. LEG status is limited to generators that, due to physical design considerations or environmental restrictions, are unable to operate continuously at full output on a daily basis.⁹ However, the Berkshire Generator did not qualify for LEG status. Immediately following the communications between Berkshire personnel and ISO-NE, ISO-NE began sending reduced dispatch instructions to the Berkshire Generator, dropping the dispatch requirement from the unit's EcoMax to its EcoMin, and the Berkshire Generator reduced its output accordingly, from 251 MW to 150 MW.

19. Early on January 12, 2021, the pipeline supplying gas to the Berkshire Generator removed the OFO condition. At 6:36 AM, a Berkshire Generator operator contacted the ISO-NE Operations Control Room to request that the generator be dispatched back up to its full day-ahead EcoMax award of 251 MW. During the call, the ISO-NE Control Room operator asked for, and received confirmation that the Berkshire Generator operator was requesting that ISO-NE remove the LEG designation. ISO-NE then resumed dispatch of the Berkshire Generator at its full EcoMax.

20. The Investigation arose out of a referral from ISO-NE's Internal Market Monitor.

21. TPS fully cooperated with Enforcement during the Investigation.

III. VIOLATIONS

22. Enforcement determined that during the Relevant Period, TPS violated provisions of the ISO-NE tariff and 18 C.F.R. §§ 35.41(a) and (b) when its affiliate, Berkshire Power, sought to avoid additional more expensive fuel purchases that would have enabled the Berkshire Generator, an ISO-NE capacity resource, to run at the levels dispatched by ISO-NE per the resource's day ahead award.

23. Resources in ISO-NE with CSOs have a strict performance obligation. Capacity resources receive guaranteed monthly capacity payments in exchange for which they are required to be offered into the ISO-NE energy markets on a daily basis and to be available

⁹ See ISO-NE Tariff § I.2.2.

for operation regardless of whether a daily offer is accepted. Nonperformance by or inaccurate information about these resources can have substantial economic and reliability effects.

24. Section III.13.6.1.1.1 of the ISO-NE Tariff requires Generating Capacity Resources, like the Berkshire Generator resource, to “be offered into both the Day-Ahead Energy Market and Real-Time Energy Market at a MW amount equal to or greater than its Capacity Supply Obligation whenever the resource is physically available.”

25. ISO-NE Tariff Section III.13.6.1.1.2 requires that Day-Ahead and Real-Time Energy Market offers “reflect the then-known unit-specific operating characteristics (taking into account, among other things, the physical design characteristics of the unit) consistent with Good Utility Practice. Resources must re-declare to the ISO any changes to the offer parameters that occur in real time to reflect the known capability of the resource.”

26. In *NEPGA*, 144 FERC ¶ 61,157 at P 47, the Commission held that the ISO-NE Tariff establishes “a strict performance obligation on capacity resources and that capacity resources may not take economic outages, including outages based on economic decisions not to procure fuel or transportation.”

27. Enforcement determined that TPS violated Sections III.13.6.1.1.1 and III.13.6.1.1.2 of the ISO-NE Tariff during the Relevant Period by modifying the real-time offers of the Berkshire Generator based on economic factors rather than physical availability. Further, even if such a revised offer was permitted, TPS did not ascertain whether LEG status was appropriate for the plant and did not dispute, through Berkshire Power, LEG status for which the Berkshire Generator was ineligible. The effect of these actions was to enable Berkshire Power to take an economic outage inconsistent with the performance obligation of resources with CSOs.

28. Section 35.41(a) of the Commission’s regulations, 18 C.F.R. § 35.41(a), provides that: “[w]here a Seller participates in a Commission-approved organized market, Seller must operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market.” Section 35.36(a)(1) of the Commission’s regulations, 18 C.F.R. § 35.36(a)(1), defines “Seller” as “any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act.”

29. TPS has, and had during the Relevant Period, market-based rate authorization and failed to schedule the Berkshire Generator consistent with the ISO-NE Tariff, as described above. Enforcement therefore concluded that TPS violated 18 C.F.R. § 35.41(a).

30. Section 35.41(b) of the Commission's regulations, 18 C.F.R. § 35.41(b), provides that: "[a] Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences."

31. Enforcement determined that attempts to reduce the dispatched level of the Berkshire Generator resource falsely and misleadingly communicated to ISO-NE a physical inability to operate at the resource's CSO. These false communications violated 18 C.F.R. § 35.41(b) because such a reduction was not due to a physical inability to operate but rather an economic decision not to procure higher-priced fuel.

IV. REMEDIES AND SANCTIONS

32. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to TPS's conduct evaluated in Enforcement's Investigation, TPS agrees with the facts as stipulated in Section II of this Agreement, but it neither admits nor denies the violations described in Section III of this Agreement. TPS further agrees to undertake the obligations set forth in the following paragraphs.

A. Civil Penalty

33. TPS agrees to pay a civil penalty of \$51,000 to the United States Treasury, by wire transfer, within twenty days after the Effective Date of this Agreement, as defined herein.

B. Disgorgement

34. TPS agrees to pay \$78,354 in disgorgement, plus interest, to ISO-NE that Berkshire Power received during the Relevant Period, within twenty days of the Effective Date of this Agreement to ISO-NE, by wire transfer, to be allocated by ISO-NE in its discretion for the benefit of ISO-NE customers and upon approval by Enforcement of ISO-NE's plan for doing so.

C. Compliance

35. TPS shall make an annual compliance monitoring report to Enforcement one year after the Effective Date of the Agreement. This compliance monitoring report shall be submitted no later than 30 days after the end of the one-year reporting period that follows the Effective Date of the Agreement. After the receipt of the first annual report, Enforcement may, at its sole discretion, require TPS to submit an annual report for one additional year. If a second compliance monitoring report is required, it shall be due one year after the first compliance monitoring report is submitted.

36. Each compliance monitoring report shall: (1) identify any known violations subject to the Commission's jurisdiction that occurred during the prior year, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures TPS instituted or modified during the reporting period related to its compliance with FERC-jurisdictional markets, including but not limited to new or updated compliance measures and procedures related to the facts and circumstances described in Section II; and (3) describe all Commission-related compliance training that TPS administered during the reporting period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

37. Each compliance monitoring report shall also include an affidavit executed by an officer of TPS stating that it is true and accurate to the best of his/her knowledge.

38. Upon request by Enforcement, TPS shall provide to Enforcement documentation supporting the contents of its reports.

V. TERMS

39. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to TPS and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

40. Commission approval of this Agreement without material modification shall release TPS and forever bar the Commission from holding TPS, any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

41. Failure by TPS to make the disgorgement or civil penalty payments, or to comply with the compliance obligations agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. § 792, *et seq.*, and may subject TPS to additional action under the enforcement provisions of the FPA.

42. If TPS does not make the required civil penalty and disgorgement payments described above within the times agreed by the parties, interest will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii)(A), (B) from the date that payments are due, in addition to the penalty specified above and any other enforcement action and penalty that the Commission may take or impose.

43. This Agreement binds TPS and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on TPS, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

44. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or TPS has been made to induce the signatories or any other party to enter into the Agreement.

45. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor TPS shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and TPS.

46. In connection with the civil penalty provided for herein, TPS agrees that the Commission's order approving the Agreement without material modification shall be a final and non-appealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). TPS waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

47. This Agreement can be modified only if in writing and signed by Enforcement and TPS, and any modifications will not be effective unless approved by the Commission.

48. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

49. The undersigned representative of TPS affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

50. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:

JANEL

BURDICK

Digitally signed by
JANEL BURDICK
Date: 2026.01.08
11:26:16 -05'00'

Janel Burdick
Director, Office of Enforcement and
Regulatory Accounting
Federal Energy Regulatory Commission

Date: January 8, 2026



Neil L. Levy
Counsel for
Tenaska Power Services Co.

Date: October 13, 2025

Document Content(s)

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